

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

DENISE JACOBS, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:12-cv-4219

MENTOR CORPORATION, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

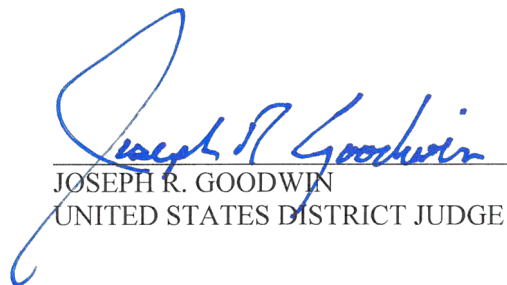
Pending is Defendant Coloplast Corp.’s Motion for Partial Summary Judgment on Plaintiffs’ Claims of Breach of Warranty, Manufacturing Defect, and Failure to Warn, filed May 13, 2019. [ECF No. 108]. In the motion, Coloplast Corp. (“Coloplast”) moves for partial summary judgment as to plaintiffs’ claims of strict liability – manufacturing defect (Count I), strict liability – failure to warn (Count II), negligence – manufacturing defect (Count III), negligence – failure to warn (Count III), breach of express warranty (Count IV), and breach of implied warranty (Count IV). Plaintiffs respond by stating that they will not pursue these claims, but also assert that the motion should be denied as moot. [ECF No. 117]. Coloplast has replied [ECF No. 120].

Plaintiffs might well have moved to dismiss these claims if they do not intend to pursue them. In any event, summary judgment is appropriate on all claims where “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). Because plaintiffs have acknowledged they do not intend to pursue the claims cited above, the court **ORDERS** that Coloplast’s Motion for Summary Judgment [ECF No. 108] is **GRANTED**. The court further

ORDERS that the following claims are dismissed as to Coloplast, the moving party, and Mentor Corporation, an additional, nonmoving defendant: strict liability – manufacturing defect (Count I), strict liability – failure to warn (Count II), negligence – manufacturing defect (Count III), negligence – failure to warn (Count III), breach of express warranty (Count IV), and breach of implied warranty (Count IV). The court further **ORDERS** that the “John Doe Corporations 1-50” are dismissed without prejudice. Other claims remain filed by plaintiffs against the remaining defendants, Coloplast and Mentor Corporation.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record.

ENTER: September 9, 2019



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE